

In re: Charne, David G. *et al.*  
Appl. No.: 09/993,751  
Filed: November 16, 2002  
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#### REMARKS

Claims 1-21 are currently pending in the application. Claims 16-21 are being canceled as being drawn to non-elected inventions. Applicants expressly reserve the right to file divisional applications or take such other appropriate measures deemed necessary to protect the inventions in the canceled claims. Claims 5, 6, 7, and 8 have been amended. Support for the amendment to claim 5 can be found, *inter alia*, on page 6, lines 13-18 of the specification as originally filed. Support for the amendment to claim 7 can be found, *inter alia*, on page 6, lines 19-22 and page 13, line 5 through page 14, line 21 of the specification as originally filed. New claims 22-34 have been added. Support for the new claims can be found in the specification as filed, *inter alia*, in the discussion of plant breeding as found from page 7, line 24 through to page 12, line 11. No new matter has been added by way of amendment. Reexamination and reconsideration of the claims are respectfully requested.

#### Restriction

The Examiner has restricted the instant application to one of the following inventions:

Group 1: Claims 1-15, drawn to a plant cell of a *Brassica napus* plant having an "R" rating for blackleg and resistance to at least one AHAS-inhibitor herbicide, wherein said plant is designated variety NS3213, represented by ATCC Accession # PTA-2471, a plant and plant part and methods of using said cell, plant and plant part to produce a *Brassica* plant, classified in class 435, subclass 418, for example.

Group 2: Claims 16 & 17, drawn to a method for preparing oil and/or meal from seed of a *Brassica* plant, classified in class 426, subclass 489, for example.

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Group 3: Claims 18 & 19, drawn to vegetable oil comprising all or part of a plant cell of a *Brassica* plant, classified in class 426, subclass 601, for example.

Group 4: Claims 20 & 21, drawn to meal produced using seed of a *Brassica* plant, classified in class 426, subclass 615, for example.

As indicated by the Examiner in the instant Office Action, during a telephone conversation with David Ran on July 23, 2003, a provisional election was made without traverse to prosecute the invention of Group 1, claims 1-15. This amendment hereby affirms the provisional election.

#### Priority

Applicants have ordered a certified copy of the Canadian patent application 2,326,285, filed in Canada on November 17, 2000, as required by 35 USC §119(b). Applicants will submit the certified copy upon receipt.

#### Specification

The Examiner has objected to the disclosure because on page 25, line 12, there is a closing bracket and at line 10, there is a parenthesis. Applicants have amended the specification to remove this typographical error and thereby respectfully request that the objection be withdrawn.

#### Claim Objections

The Examiner has objected to claims 5, 6 and 8 because of informalities. Applicants thank the Examiner for his suggestions and have amended claims 5, 6, and 8 as suggested by the Examiner. Accordingly, Applicants respectfully request that the claim objections be withdrawn.

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The Rejection of Claim 5 Under 35 U.S.C. §112, Second Paragraph, Should be Withdrawn

The Examiner has rejected claim 5 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter that Applicant regards as the invention. Specifically, the Examiner has indicated that claim 5 recites the broad range, "vegetative parts", while also reciting "roots and leaves", which fall in a narrow range. Applicants have amended the claim to remove reference to vegetative parts, thereby obviating the rejection.

Accordingly, Applicants respectfully request withdrawal of the rejection of claim 5 under 35 U.S.C. §112, second paragraph.

The Rejection of the Claims Under 35 U.S.C. §112, First Paragraph, Should be Withdrawn

*Written Description*

The Examiner has rejected claims 7-11 under 35 U.S.C. §112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention.

The Examiner states that Applicants have not described the genus of progeny plants descendent from NS2313 that would be required to practice the claimed method of breeding as broadly claimed.

Applicants traverse the rejection, however, in the interests of furthering prosecution, Applicants have amended claim 7, and thus dependent claims 8-11, to specify progeny plants descendent from the breeding of NS2313 comprising at least partial tolerance to at least one AHAS-inhibitor herbicide, and furthermore to specify progeny plants inheriting at least the AHAS-1 mutation from the parent plant of NS2313.

Accordingly, Applicants request that the rejection of claims 7-11 under 35 U.S.C. §112, first paragraph, be withdrawn.

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### *Enablement*

The Examiner has rejected claims 7-11 under 35 U.S.C. §112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention commensurate in scope with the claims. Applicants have amended claims 7-11 as previously mentioned in the instant response. Applicants assert that as a result of these previously discussed amendments, claims 7-11 meet the enablement requirement.

Furthermore, the Examiner has rejected claims 1-15 under 35 U.S.C. §112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The Examiner states that the specification does not disclose a repeatable process to obtain the plant and it is not apparent if the plant is readily available to the public.

Applicants direct the attention of the Examiner to the Deposit Statement submitted concurrently, which should satisfy the deposit requirement.

Accordingly, Applicants respectfully request that the rejection of claims 1-15 under 35 U.S.C. §112, first paragraph, be withdrawn.

### CONCLUSION

In view of the above amendments and remarks, Applicants submit that the rejections of the claims under 35 U.S.C. §112, first and second paragraphs have been overcome. Applicants respectfully submit that this application is now in condition for allowance. Early notice to this effect is solicited.

If in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject Application, the Examiner is invited to call the undersigned.

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It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR §1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-1852.

Respectfully submitted,



Claire L. Moxon  
Agent for Applicant(s)  
(See: LIMITED RECOGNITION  
UNDER 37 CFR § 10.9(b)  
SUBMITTED 10-29-2003)

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Attorney Docket No. 1311

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Chame, David G. *et al.* Date: October 29, 2003  
Serial No.: 09/993,751 Group Art Unit: 1638  
Filed: November 16, 2001 Examiner: Kruse, David H.  
For: BRASSICA WITH RESISTANCE TO AN AHAS-INHIBITOR HERBICIDE  
AND BLACKLEG DISEASE

Assistant Commissioner for Patents  
Washington, D.C. 20231

DEPOSIT STATEMENT

The lines indicated below were deposited on September 14, 2000 with the American Type Culture Collection (ATCC), 10801 University Blvd., Manassas, VA 20110-2209. The deposits will irrevocably and without restriction or condition be available to the public upon issuance of a patent. However, it should be understood that the availability of a deposit does not constitute a license to practice the subject invention in derogation of patent rights granted by government action.

Seed	Accession Number	Deposit Date
Brassica napus 46A76	PTA-2469	September 14, 2000
Brassica napus NS3213	PTA-2471	September 14, 2000

Respectfully submitted,



David B. Ran  
Attorney for Applicant(s)  
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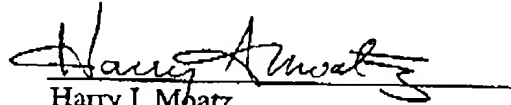
**BEFORE THE OFFICE OF ENROLLMENT AND DISCIPLINE  
UNITED STATE PATENT AND TRADEMARK OFFICE**

**LIMITED RECOGNITION UNDER 37 CFR § 10.9(b)**

Claire L. Moxon is hereby given limited recognition under 37 CFR § 10.9(b), as an employee of Pioneer Hi-Bred Int'l, Inc., to prepare and prosecute patent applications wherein Pioneer Hi-Bred Int'l, Inc. is the assignee of record of the entire interest. This limited recognition shall expire on the date appearing below, or when whichever of the following events first occurs prior to the date appearing below: (i) Claire L. Moxon ceases to lawfully reside in the United States, (ii) Claire L. Moxon's employment with Pioneer Hi-Bred Int'l, Inc., ceases or is terminated, or (iii) Claire L. Moxon ceases to remain or reside in the United States on an H-1B visa.

This document constitutes proof of such limited recognition. The original of this document is on file in the Office of Enrollment and Discipline of the U.S. Patent and Trademark Office.

**Expires: June 6, 2004**

  
Harry I. Moatz  
Director of Enrollment and Discipline